IN THE HIGH COURT OF BOMBAY AT GOA

FIRST APPEAL NO. 31 OF 1998.

1.State of Goa,
through Dy. Collector & SDO,
Ponda Sub Division,
Ponda, Goa.

2.The Assist. Defence Estate
Officer, having its office at
Panaji, Near Goa Police Station
(Traffic Cell), Panaji. ... Appellants.

VERSUS

Smt.Ramabai Narcinva Ghode,
(deceased through L.Rs.)

1. Mr. Pandurang Narcinva Ghode.

2. Mrs. Sulaksha Pandurang Ghode.

3. Mr. Laximikant Narcinva Ghode.

4. Mrs. Rekha Laximikant Ghode.

5/ Mr. Naguesh Narcinva Ghode.

6. Smt. Suchita Nagues Ghode.

7. Mast. Umesh Naguesh Ghode.

8. Miss Uma Naguesh Ghode,
both minors, represented by
their father and natural guardian
Mr. Naguesh Ghode.

9. Mr. Minnath Vaikant Prabhu Dessai.

10. Mrs. Shrimati M. Prabhu Dessai.

11. Mr. Dinkar Vassant Budkule.

12. Mrs. Sharad D. Budkule,
all residents of Borda,
Margao, Goa. ... Respondents.

Mr. H.R. Bharne, Government Advocate for the Appellants.

Mr. F.M. Reis, Advocate for the Respondents.

CORAM: N.A. BRITTO, J.

DATE OF RESERVING THE JUDGMENT: 5.04.2004.
DATE OF PRONOUNCING THE JUDGMENT: 8.04.2004.

J U D G M E N T:

The State of Goa through its Deputy Collector and the Assistant Defence Estate Officer has preferred this appeal against the Judgment/Award dated 18.8.1997 of the learned District Judge, Panaji (Reference Court).

2. By virtue of Notification issued under Section 4(1) of the Land Acquisition Act 1894 and published in Official Gazette dated 13.12.88 the Government acquired 38325 sq.m. of land situated at Kurti, Ponda for 6 TTR (2 STC) at Kurti, Ponda – Goa additional area and in that was included an area of 2872.25 sq.m. of the respondents' land surveyed under No.65/1 of Kurti village of Ponda Taluka and the LAO by Award dated 23.11.90 awarded to the respondent compensation for the said acquisition at the rate of Rs.40/- per sq.m.

3. The respondents sought a reference to be made and the reference having been made, the Reference Court was pleased to enhance the compensation payable to the respondents at the rate of Rs.133/- per sq.m.In

enhancing the said compensation the learned Reference Court used a plot of sale deed dated 28.5.88 – Exh.AW1/A as a guide to enhance the said compensation.

4. The said plot of sale deed dated 28.5.88 was a plot sold by M/s. Matches Goa Pvt. Ltd. at the rate of Rs.200/- per sq.m. and was admeasuring Rs.393.10 sq.m. of survey No.70.

5. Based on the evidence of Aw.1 Vassant Ghode and AW.3 Suryakant Parmekar, the learned Reference Court came to the conclusion that the acquired property was situated at a distance of about 3-1/2 kms. from Goa Engineering College and that there was a Commerce College at a distance of 2-1/2 kms. and a school at a distance of about 1 km. and that there was a kacha road touching the acquired property and tarred road at a distance of about 100 metres away. Referring to the evidence of AW.1 Vassant Ghode, the learned Reference Court observed that the acquired property also originally belonged to the said Matches Goa Pvt. Ltd. the mother of the said Vassant Ghode having been allotted the land of which the acquired property formed part as her share in the said M/s Matches Goa Pvt. Ltd., who later on had sold some plots after development including the plot of sale deed dated 28.5.88 –

Exh.AW1/A. The learned Reference Court further observed that AW.3 the said Parmekar had confirmed that the sale deed dated 28.5.88 (Exh.AW1/A) was of plot sold by M/s. Matches Goa Pvt. Ltd. and that the consideration mentioned in the sale sale deed was received by them and although the said AW.3 Parmekar had produced two other sale deeds dated 8.2.89 and 11.1.89, the sale deed dated 28.5.88 had to be preferred as it was a pre-acquisition sale. Learned Reference Court therefore proceeded to deduct 1/3 towards the cost of development and then fixed the compensation payable to the respondent at the rate of Rs.133/- per sq.m.

6. In the above background, learned Govt. Advocate Shri Bharne has submitted that the learned Reference Court has not taken into consideration that the plot of the sale deed was a small plot as compared to the acquired property which was a large property. Learned Advocate Shri Bharne has next submitted that the acquired property was falling in an industrial zone and therefore there would not have been a willing purchaser to purchase the same. Mr. Bharne has next submitted that the acquired property had a gradient and was slopy in nature which factor has not been considered by the Reference Court. Referring to the sale deed dated 28.5.88, Shri Bharne has submitted that it was of a

developed plot and therefore the same could not have been compared with the acquired property. Shri Bharne has placed reliance on the case of **Basavva (Smt) and others v. Spl. Land Acquisition Officer and others** reported in (1996) 9 S.C.C., 640 to show that deduction always need not be 1/3 and that in that case deduction was taken at 65%. In fact, in this case the Hon'ble Supreme Court had observed that for developmental charges, deduction between 33/-1/3 to 53% was held to be valid by that Court in several judgments. Shri Bharne also placed reliance on the case of **Ratan Lal Gupta and others v. Union of India (1996) 7 S.C.C., 3** wherein the deduction was taken at the rate of 78,45%. However, it is to be noted that the said deduction was taken because the lands in question were in undeveloped area though adjacent to the developed area and as it would take long time for realisation of potentials as they would require further development.

7. On the other hand, Shri Reis, learned Advocate for the respondents, has submitted that the acquired property was initially part of the same property which at one time belonged to the said M/s. Matches Goa Pvt. Ltd. and in case the acquired property was industrial in nature, it would certainly fetch a higher price than the property meant for residential use and therefore the

respondents ought to have been awarded higher compensation. Shri Reis has next submitted that the appellants did not challenge the evidence of the respondents as regards the infrastructural facilities which were available and that the evidence of AW.3 Parmekar showed that both the properties were of the same nature. Shri Reis has submitted that the learned Reference Court, in the facts and circumstances of the case, was fully justified in fixing the compensation at Rs.133/- per sq.m. which is required to be maintained. Referring to the case reported in **O.A.K. Nachimuthu (dead) by L.Rs. and others v. Revenue Divisional Officer, Erode, Tamil Nadu** (A.I.R. 2001 S.C., 2414) learned Advocate Shri Reis has submitted that the market value cannot be fixed with precision and certain amount of guess-work is involved.

8. The learned Reference Court observed that it was correct that the acquired property being less than 4000 sq.m. in area, there would be no question of keeping open spaces but nevertheless a deduction of 1/3 was required to be made which aspect would get adjusted against the fact that the acquired property was slightly sloppy as compared to the plot of sale deed (Exh.AW.1/A). Learned Advocate Shri Bharne has doubted the correctness of the observations of the learned

Reference Court and to substantiate the said observations, learned Advocate Shri Reis has referred to the Planning and Development Authority (Development Plan) Regulations particularly to Regulation 20 which deals with group housing/group of commercial buildings and inter alia provides that if a plot is used for group housing/group of commercial buildings in addition to parking space to be provided as per regulations, an open space shall have to be provided as per the conditions laid down below, one of the conditions being that (1) if the effective area of the plot is more than 4000 sq.mts. 15% of the total area of the plot shall have to be kept as usable open space. However for calculating the coverage and F.A.R. the effective area of entire plot shall be taken into consideration. It was not the case of the respondents that the respondents at any time had plans to make use of the acquired property for group housing or group of commercial buildings. The entire endeavour of the respondents had been to compare the acquired property with the plot of the sale deed Exh.AW1/A and to obtain a price which was given to the said plot of the Sale Deed Exh.AW.1/A and therefore the observation that the acquired property being less than 4000 sq.mts. in area was not required to keep open space for development is an observation which cannot be accepted because it was never the case of the

respondents that the property should be assessed as property meant for group housing or group commercial buildings.

9. The submission that the acquired land fell in an industrial zone has been made by Shri Bharne, learned Govt. Advocate based on what AW.2 Vikas Dessai has stated. AW.2 Vikas Dessai stated that: " I do not know whether at the time of acquisition of the suit plot, it was agricultural or non-agricultural but it was lying in an industrial zone". One does not know on what basis the said AW.2 Dessai made the said statement. The award of the L.A.O. only makes a mention that the lands under acquisition were barad type of lands and the land of survey No.65 was plain land where there were few trees. In case the acquired land would fall in the industrial zone, the L.A.O. would have certainly referred to this aspect of the case. Aw.2 Shri Dessai who calls himself an expert, did not know whether at the time of acquisition of the acquired land, was agricultural or non-agricultural. But he stated that it fell in an industrial zone. Only from the said bare statement it is not possible to conclude that the acquired land was falling in an industrial zone at the relevant time and therefore the contention of Shri Bharne that the acquired land fell in the industrial zone could not be

accepted.

10. The Hon'ble Supreme Court in the case of **Tejumal Bhojwani (dead) through L.Rs. and others v. Sate of U.P.** reported in 2003 (10) SCC, 525 has obs**erved** that developmental charges to be deducted vary from place to place. In the case at hand deduction of 1/3 considering that basic amenities like water and electricity were available closeby, could not be faulted. However, it appears that the learned Reference Court did not consider smallness of the plot of sale deed (Exh.AW.1/A) as one of the minus factors as compared to the acquired property which was more than seven times larger than the plot of sale deed. Likewise, the learned Reference Court also appears not to have considered that acquired property was having a gradient and was otherwise sloppy but proceeded to adjust this minus factor against the said deduction of 1/3. The Hon'ble Supreme Court in the case of **Ratan Lal Gupta and others (supra) has observed that it has been repeatedly held** by a catena of decisions of that Court that when the market value is to be determined on the basis of small plots of land the same price cannot be expected to be realised when a large track of land is offered to a willing purchaser by a willing vendor. In case more plots like Exh.AW.1/A were to be carved out by the appellants, the appellants

would have certainly to wait for some time to sell the same to willing purchasers and on that count also a further deduction ought to have been made by the Reference Court. In my opinion in addition to 1/3 deduction made further deductions ought to have been made for the minus points referred to by me hereinabove and considering the totality of the facts of the case, the learned Reference Court ought to have made a total deduction of at least 40% and having made the same, market value ought to have been fixed for the acquired property at Rs.120/- per sq.m. which I hereby do.

11. The appeal is accordingly partly allowed and the market value of the acquired property is fixed at Rs.120/- per sq.m. Needless to observe that the respondents would be entitled to all consequential statutory benefits provided under the Act. No order as to costs.

N.A. BRITTO, J.

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